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1 APPEARANCES:

2 On behalf of the Government:

3 OFFICE OF THE U.S. ATTORNEY  
4 BY: PHILLIP J. TRIPI, AUSA  
801 W. Superior Avenue, Suite 400  
5 Cleveland, OH 44113

6 On behalf of the Defendant:

7 JAIME P. SERRAT, ESQ.  
2000 Standard Building  
8 1370 Ontario Street  
9 Cleveland, OH 44113

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P R O C E E D I N G S

THE COURT: The Court calls the case of United States versus Matthew J. Holland. I would ask if Mr. Holland received — do you want to come to the podium please, Mr. Holland?

Mr. Holland, did you have an opportunity to review the presentence report?

THE DEFENDANT: Yes, your Honor.

THE COURT: Are there any additions or corrections the Defendant wishes to have made, Mr. Serrat?

MR. SERRAT: No, your Honor, other than the objections that are noted.

THE COURT: I believe — is this a case where there was an additional plea?

MR. SERRAT: Yes.

THE COURT: And motion to suppress?

MR. SERRAT: And we already executed the proper document to preserve that for the Sixth Circuit, your Honor.

THE COURT: All right. Well, looking now, the offense level is calculated on page 8, and the adjusted offense level is 24, and I believe you were complaining — I shouldn't say complaining — taking issue with the specific offense characteristic regarding

1 the gun?

2 MR. SERRAT: Correct.

3 THE COURT: And paragraph 30 reads "pursuant  
4 to 2B3.1 — pursuant to Section 2B3.1(b) (2) (F), demand  
5 note. I have a gun. Stay calm, and nobody gets hurt."  
6 If a threat of death is made, increase by two levels, and  
7 that was for the bank robbery in Count 1.

8 In Count 2 there was — with the adjusted  
9 offense level being calculated to 24.

10 Count 3, that bank robbery also results in a  
11 base offense level — adjusted offense level of 24 with  
12 the two levels added because the demand note said, quote,  
13 "this is a robbery. I have a gun. Stay calm. Don't  
14 push any buttons. No dye packs. I want \$5s, \$10s, \$20s  
15 \$50s, hundreds. No one will get hurt. Start passing me  
16 the money."

17 And Count 5, the bank robbery there the base  
18 offense level was 20, and apparently, there was no  
19 threat there. So the adjusted offense level is 22.  
20 Then the multiple count adjustment added four level less  
21 3 for acceptance of responsibility, and I gather the  
22 Government has no objection to the third level for  
23 acceptance?

24 MR. TRIPI: Your Honor, we do not, and we so  
25 move.

1 THE COURT: Thank you.

2 So the adjusted offense level turns out to  
3 be 25, and the Criminal History Category, I think it is a  
4 III.

5 MR. SERRAT: It is, your Honor.

6 THE COURT: Now, your objection was to the  
7 addition of the three levels for threat?

8 MR. SERRAT: Correct, your Honor.

9 THE COURT: And you want to elaborate on  
10 that?

11 MR. SERRAT: Judge, I prepared a sentencing  
12 memorandum —

13 THE COURT: And I appreciate that.

14 MR. SERRAT: — in detail. And I will  
15 summarize it quick.

16 On two of the more serious threats, so to  
17 speak, he was way outside. He was nowhere near the bank,  
18 though the note as well, the comments were made by the  
19 co-defendant.

20 So, therefore, I understand the aiding and  
21 abetting principle, but I would argue, my client, there  
22 is no evidence that my client knew or would have known  
23 that that was going to be presented to the teller.

24 As to the third one, your Honor, I  
25 understand since then, even though not Sixth Circuit,

1 there is a case out of the Ninth Circuit that leaves it  
2 up to the Court to make a final determination whether or  
3 not that would apply, and I understand that, again, it is  
4 a different circuit with good law on behalf of my client,  
5 and it is simply to preserve for the Sixth Circuit I am  
6 making that motion, your Honor.

7 THE COURT: Very well. Does the Government  
8 have a response?

9 MR. TRIPI: Your Honor, the evidence  
10 demonstrated that both Persa and Holland were co-equal  
11 participants in the crimes and took turns as far as who  
12 was going to go into the bank itself.

13 We believe it would be foreseeable they  
14 would be using this type of note, especially giving the  
15 type of note he was using himself. We would acknowledge  
16 the more egregious note was written by Persa.

17 THE COURT: And what was Mr. Persa's  
18 sentence?

19 MR. SERRAT: It was higher. He ended up at  
20 the — I think it was a Criminal History IV.

21 MR. TRIPI: He ended up, your Honor, ended  
22 up with 96 months.

23 MR. SERRAT: 25, Criminal History IV.

24 THE COURT: And his range was what?

25 MR. SERRAT: It was 84 to 105. I am going

1 by memory.

2 THE COURT: I think that's true. Yeah, he  
3 was — did I calculate him as a 23?

4 MR. SERRAT: No, Judge, a 25, 25, Criminal  
5 History IV, Category IV.

6 THE COURT: Oh, IV. Now I see it. I was  
7 trying to find where I was.

8 So he got 96 months and basically because  
9 his Criminal History was slightly higher than your  
10 client's?

11 MR. SERRAT: And other things I mentioned in  
12 my argument.

13 THE COURT: He had a more aggressive role.

14 MR. TRIPI: Persa had two other things that  
15 may — just in fairness to this Defendant, first, he had  
16 an additional count where he committed a solo bank  
17 robbery that this Defendant is not facing.

18 THE COURT: Is that the Subway.

19 MR. SERRAT: No, no. Different one.

20 MR. TRIPI: Then the Subway, it appears  
21 Persa is the one that went off and did that, and the  
22 Defendant's only involvement in the Subway matter was to  
23 attempt to shield him from detection from the Cleveland  
24 Police.

25 THE COURT: Because that was the search that

1 eventually resulted in the identification of one of the  
2 persons as the bank robber as I recall.

3 MR. TRIPI: Yes, your Honor.

4 THE COURT: All right. Well, as I see it,  
5 the sentencing range is 70 to 87 months.

6 Does the Government have a sentencing  
7 recommendation? I am denying the motion —

8 MR. SERRAT: I got you, Judge.

9 THE COURT: — for the adjustment of the  
10 offense level, but I still have 17 months here to  
11 consider.

12 MR. SERRAT: There is one other — to make  
13 it clear on the record —

14 THE COURT: Sure.

15 MR. SERRAT: — we requested a minor role  
16 two-level reduction for minor role. Some of the things I  
17 have — have been spread on the record, but certainly,  
18 the evidence would indicate that Persa, the co-defendant,  
19 took the leader role.

20 He was involved in a bank robbery by  
21 himself. The Subway matter would also indicate that he  
22 was much more culpable or perhaps took the leadership  
23 role than my client, and because of that, your Honor, we  
24 are asking for a two-level reduction for role.

25 THE COURT: All right. I am going to deny



1 that. I don't believe it is called for. So I still  
2 think I am at 70 to 87 months.

3 MR. TRIPI: Your Honor, we were going to  
4 defer to the Court's discretion as to where within the  
5 range. We would ask for a sentence within the range and  
6 for restitution, joint and several restitution be ordered  
7 as well.

8 MR. SERRAT: I have a second, your Honor.

9 THE COURT: Is there a restitution  
10 recommendation here in the presentence report? I guess I  
11 did make restitution with Persa.

12 MR. RIFFLE: Top of page 37, your Honor.

13 THE COURT: 37. Thank you. Okay. Very  
14 well. Thank you.

15 MR. SERRAT: Judge — I'm sorry.

16 THE COURT: Go ahead.

17 MR. SERRAT: I am going to make a short  
18 statement, and after that, it will be followed by my  
19 client.

20 Mr. Tripi and I have had numerous  
21 discussions regarding this matter, and I asked the  
22 Government by way of Mr. Tripi whether they would have a  
23 formal objection, whether the Court would impose the  
24 minimum sentence, and he indicated he would not.

25 And I want to make sure the Court is aware

1 of that. With that, Judge, with the Court's permission,  
2 I would turn over to you my client. I don't want him to  
3 repeat the statement that I would make. Go ahead.

4 THE COURT: Mr. Holland, you have the  
5 opportunity to speak. And you may do so.

6 THE DEFENDANT: Your Honor, I am not going  
7 to stand here and give you excuses for what I did or try  
8 and put the blame on something or someone else. When it  
9 comes down to it, the truth is I am the one to blame, and  
10 I do accept full and complete responsibility for my  
11 actions.

12 It was my fault and no one else's, and I  
13 just want to say that I am disgusted with myself. To  
14 this day, I still can't believe I was doing what I did.  
15 It was wrong. What I did was wrong, and I apologize.

16 Your Honor, I just want you to know that I  
17 am not a bad person. Bottom line is that, you know, I am  
18 a drug addict, and I need help. I know I need help. And  
19 I have had this addiction for many years and pretty much  
20 has done nothing but ruin my life.

21 I have lost everything good that I ever had  
22 because of it, and, you know, it took me getting to where  
23 I am at right now to finally realize that if I don't  
24 change the way I live, one of two things are going to  
25 happen:

1           Either, one, I am going to spend the rest  
2 of my life in and out of jail, or two, I am going to  
3 end up dead; simple as that. And I don't want to live  
4 my life knowing that that's what I have to look forward  
5 to.

6           THE COURT: Well, I appreciate your remarks.  
7 I note that you will be 31 in December, correct?

8           THE DEFENDANT: Yes, your Honor.

9           THE COURT: And you have got a daughter?

10          THE DEFENDANT: Yes, your Honor.

11          THE COURT: You got a GED and some college.  
12 Where did you go to the school and what college?

13          THE DEFENDANT: Just community college, your  
14 Honor.

15          THE COURT: What employment skills do you  
16 now have?

17          THE DEFENDANT: I have always been a cook.  
18 I was a cook for about 10, 11 years. I have done other  
19 things. I have rehabbed homes. I have done roofing.

20          THE COURT: Well, we have a lot of problems  
21 with bank robbery, and I realize that's where the money  
22 is, and that's what produces bank robberies. Actually,  
23 your sentence is going to be about as low as any sentence  
24 I recall giving for a bank robbery.

25               It is a pretty serious offense, but the

1 thought I want to leave you with is, your life expectancy  
2 as of today is probably about 50 years. So you are going  
3 to come out of prison, and the issue is going to be what  
4 are you going to do with the rest of your life?

5 And that's basically under your control, and  
6 I do hope that while you are in prison you will accept  
7 every opportunity you get to get more education and, if  
8 possible, enlist or try to get into prison industries.

9 In the federal the system, they have what  
10 they call prison industries, and most prisons have prison  
11 industries. And you can possibly develop a trade to give  
12 you an opportunity for more gainful employment when you  
13 are released. I have visited a number of prisons, and I  
14 have seen some pretty impressive programs in prison  
15 industries.

16 So the moment you get to prison, see what  
17 you can do toward developing a trade. You say you are a  
18 cook, and they may want you to be a cook, you know, but  
19 you may want to see if there is something else that you  
20 can develop.

21 I appreciate the remarks that you have made,  
22 and as a consequence, it will be the Court's sentence  
23 that you be confined to the BOP for a period of 72 months  
24 with supervised release for a period of three years, plus  
25 an order of restitution consistent with the — what's set

1     forth in the presentence report with respect to  
2     restitution. That will be jointly and severally with the  
3     co-Defendant as far as payments of the restitution.

4             MR. SERRAT: Judge, while you are issuing  
5     the order — and I don't mean to stop you — could the  
6     Court recommend — and I understand it is a  
7     recommendation — he thinks Cumberland would best fit for  
8     him in Maryland.

9             THE COURT: We will recommend it.

10            MR. SERRAT: And could you recommend a  
11     500-hour —

12            THE COURT: I will do that, and I have more  
13     things I will have to put into this order.

14            Upon release from imprisonment, the  
15     Defendant shall be placed on supervised release for a  
16     term of three years, and each count could be served  
17     concurrent with each other.

18            Within 72 hours of release from the custody  
19     of the Bureau of Prisons the Defendant shall report in  
20     person to the United States Probation Office in the  
21     sentencing district — in the district to which he has  
22     been released.

23            The Court waives a fine.

24            The Court will require restitution in the  
25     amount of \$6,830 to KeyBank and \$3,703 to US Bank.

1 Restitution is due and payable immediately. I assume I  
2 ordered restitution for the other — the co-Defendant. I  
3 don't remember that.

4 MR. RIFFLE: I was not in on that case, your  
5 Honor, but there is a — I apologize — but there is a  
6 third bank that is listed on top of page 36, which is  
7 Fifth Third, and the reason, they never responded, but  
8 the fact is they are out \$5,145 that I would recommend be  
9 added to those other two losses.

10 THE COURT: Very well. I will include that.  
11 But the payment shall be joint and several with the  
12 co-Defendant, and I assume I have an order of restitution  
13 in that sentencing entry, but frankly, I don't remember.

14 MR. TRIPI: Your Honor, yes, I believe I  
15 do — I recall there being a restitution order.

16 THE COURT: When I say joint and several,  
17 what that means is, any payment that he makes, you get  
18 credit, and any payment you make, he gets credit until  
19 the full amount has been paid. That's what joint and  
20 several means.

21 The Defendant shall pay 25 percent of his  
22 gross income per month through the Federal Bureau of  
23 Prisons Inmate Financial Responsibility Program.

24 If a restitution balance remains upon  
25 release from imprisonment, payment is to commence no

1 later than 60 days following release from imprisonment to  
2 a term of supervised release in equal monthly payments  
3 or, at least, a minimum of ten percent of Defendant's  
4 gross monthly income during the term of supervised  
5 release and thereafter as prescribed by law.

6 Notwithstanding the establishment of payment  
7 schedule, nothing shall prohibit the United States from  
8 executing or levying upon property of the Defendant  
9 discovered before or after the date of his judgment. The  
10 Court waives the interest requirement in this case.

11 The Defendant shall pay the United States a  
12 special assessment of \$400 — are there four counts?

13 MR. TRIPI: Yes, your Honor.

14 MR. SERRAT: Yes, Judge.

15 THE COURT: Okay. That shall be due  
16 immediately.

17 While on supervision, Defendant shall not  
18 commit a federal, state, or local crime; shall comply  
19 with the standard conditions that have been adopted by  
20 this Court, and shall comply with the following  
21 additional conditions:

22 Mandatory drug testing. The Defendant shall  
23 refrain from any unlawful use of a controlled substance  
24 and submit to one drug test within 15 days of the  
25 commencement of supervision and to at least two periodic

1 drug tests thereafter as determined by the Pretrial  
2 Services Probation Officer.

3 Firearms and dangerous weapons: The  
4 Defendant shall not possess a firearm, destructive device,  
5 or dangerous weapon. And I want to make sure you  
6 understand, even after you are off supervised release,  
7 you can never possess a firearm.

8 Do you understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Because so many people come  
11 before me as convicted felons who have a firearm under  
12 their control, and they are in big time trouble, and  
13 that's even if somebody is threatening you. You just  
14 can't have a gun on your person, in your automobile, or  
15 on your premises, and please remember that, so you don't  
16 fall prey to that particular situation.

17 Search and seizure: The Defendant shall  
18 submit his person, residence, place of business,  
19 computer, or vehicle to a warrantless search conducted  
20 and controlled by the United States probation officer at  
21 a reasonable time and in a reasonable manner based upon  
22 reasonable suspicion of a contraband or evidence of a  
23 violation of a condition of release. Failure to submit  
24 to a search may be grounds for revocation.

25 The Defendant shall inform any other



1 residents the premises may be subject to a search  
2 pursuant to this condition.

3 Financial disclosure: The Defendant shall  
4 provide the probation officer with access to any  
5 requested financial information.

6 Financial restriction: Defendant shall not  
7 incur new credit charges or open additional lines of  
8 credit without the approval of the probation officer.

9 Drug treatment: The Defendant shall  
10 participate in an approved program of an outpatient,  
11 inpatient, or detoxification of substance abuse  
12 treatment, which will include drug and alcohol testing  
13 to determine if the Defendant reverted to substance  
14 abuse.

15 Mental health treatment: The Defendant  
16 shall participate in an outpatient mental health  
17 treatment program as directed by the probation  
18 officer.

19 DNA collection: The Defendant shall  
20 cooperate in the collection of DNA as directed by the  
21 probation officer.

22 Financial windfall condition: Defendant  
23 shall apply all monies received from income tax refunds,  
24 lottery winnings, judgments or any other anticipated or  
25 unexpected financial gain to the outstanding

1 Court-ordered financial obligation.

2 The Defendant shall be given credit for the  
3 time he has been in custody.

4 When did the Defendant go into custody?

5 MR. SERRAT: 1-14, Judge, January 14th.

6 THE COURT: Very well. The Court will  
7 indicate he should be granted credit for that time he has  
8 been in custody.

9 Now, I ask the Government, is there anything  
10 further you believe I need to cover with respect to the  
11 sentencing?

12 MR. TRIPI: Your Honor, no. I do note that  
13 the release status indicates he was arrested on January  
14 24th. I don't know whether — there may have been a  
15 period he was in state custody. I don't know if the  
16 Bureau of Prisons will give that to him, but on the face  
17 of the presentence report, it says January 24th was the  
18 initial appearance.

19 MR. RIFFLE: He went into federal custody on  
20 January 24th, but he was previously in local custody  
21 before that.

22 THE COURT: Oh, I see that. So we will make  
23 it from the 24th of January. It is still a lot of time  
24 you are credited for.

25 You want a recommendation for the 500-hour

1 drug treatment program?

2 MR. SERRAT: We do, your Honor.

3 THE COURT: I will make that, and then  
4 he wants to request the institution in Cumberland,  
5 Maryland?

6 MR. SERRAT: Correct.

7 THE COURT: I will make that recommendation,  
8 but I have to tell you, Mr. Holland, that the Bureau of  
9 Prison has every right to ignore me, and they frequently  
10 do, but we will make the recommendation.

11 Do you have an alternative recommendation?

12 THE DEFENDANT: Terra Haute, your Honor.

13 THE COURT: Terra Haute, all right. We will  
14 give that as a secondary request.

15 THE DEFENDANT: Thank you.

16 THE COURT: Anything further that the  
17 Defendant wants to bring to my attention?

18 MR. SERRAT: Just the appeal, Judge.

19 THE COURT: Right. Obviously, he has a  
20 right to file a notice of appeal, and I assume you are  
21 going to file a notice for him?

22 MR. SERRAT: I will, your Honor.

23 THE COURT: Do you want me to appoint you or  
24 someone else?

25 MR. SERRAT: However. Mr. Holland indicated

1 he would like me to do it, but you ask him now on the  
2 record.

3 THE DEFENDANT: Yeah. I would like  
4 Mr. Serrat to do it.

5 THE COURT: I will appoint him if he will  
6 accept the assignment.

7 MR. SERRAT: Yeah.

8 THE COURT: It was a pretty contested issue,  
9 and I think it is a conditional plea as I recall it.

10 MR. SERRAT: It is.

11 THE COURT: I have to tell you, Mr. Holland,  
12 the Sixth Circuit is not speedy. So you anticipate  
13 probably at least a year will go by before you will hear  
14 on your appeal. Even though I know Mr. Serrat will work  
15 expeditiously to represent you, and I have great respect  
16 for his abilities, and I know he will do a good job in  
17 representing you, but you have to recognize it is going  
18 to take a while before they rule.

19 THE DEFENDANT: I understand, your Honor.

20 THE COURT: Anything further to come before  
21 the Court?

22 MR. TRIPI: No, sir. Thank you.

23 THE COURT: Court will be in recess.

24 (Hearing concluded at 1:45 p.m.)

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C E R T I F I C A T E

I, George J. Staiduhar, Official Court  
Reporter in and for the United States District Court,  
for the Northern District of Ohio, Eastern Division,  
do hereby certify that the foregoing is a true  
and correct transcript of the proceedings herein.

s/George J. Staiduhar  
George J. Staiduhar,  
Official Court Reporter

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